Workers' Compensation

The Problem

In January, the Department of Labor and Industries will have raised injured workers' compensation rates for employers and employees for three straight years – by an average of 29.5 percent in 2003, 9.8 percent in 2004, and 3.7 percent in 2005. The continued rate hikes affect the pocketbooks of business owners and workers alike, threatening current jobs and making the creation of new jobs harder.

The Solution

A new law is needed to make the state's injured workers' compensation system stable, simple and certain. Real, meaningful reform will dramatically reduce delays in delivering payments and allow more time for quality claims management assistance.

Background

- L&I manages Washington's workers' comp program that provides industrial insurance benefits to 1.9 million workers and about 160,000 employers. About 800,000 workers, representing 30 percent of the state's workforce, are employed by companies that are self-insured.
- Washington's injured workers' compensation system historically has been generous compared to other states — providing higher benefits to injured workers and relatively low premium costs to employers. It's difficult to accurately compare Washington's workers' compensation system to other states because Washington is the only state that uses hours instead of payroll to determine premiums. In addition, Washington is the only state in the nation requiring workers to pay into the workers' comp system. Half of the system's medical aid fund is paid by employees, with the other half paid by employers. The system's accident fund is paid entirely by employers.
- The average worker in Washington currently pays $262 in workers' compensation premiums per year, while the average employer pays $772 per worker annually.
- The 2004 rate hike resulted in the average worker paying an additional $20 in workers' comp premiums per year and the average employer paying an extra $77 per worker annually. If the proposed 2005 rate increases go into effect, the average worker will pay an extra $12 in workers' comp premiums annually and the average employer will pay an additional $28 per worker annually. Many employees and businesses would pay far more than these averages. For instance, the average department store worker will pay an extra $55 a year while that employer will pay an extra $164 per employee.
- The higher injured workers' compensation premiums impact Washington's sluggish economic recovery because it increases costs at a time when many businesses simply can't afford it.

In 2003, Gov. Locke proposed a panel made up of business and labor leaders to take a look at long-term changes to the state's workers' compensation system. The panel was a recommendation of the governor's Competitiveness Council. However, the panel disbanded before the participants were able to agree on the ground rules for negotiations or what issues on which to negotiate.

Initiatives to the Legislature

Initiative 333: The **Building Industry Association of Washington (BIAW)** has filed an initiative to the 2005 Legislature. I-333 would revise workers' comp benefits, including redefining wages to exclude fringe benefits; limiting death and disability benefits for workers, spouses and dependents to 120 percent of the average monthly wage in the state, adjusted for inflation; and establishing new limits on payments to disabled workers. Under the measure, annual audits would be required, and new limits would be set on fees for attorneys representing workers or beneficiaries.

Initiative 334: The **Washington State Labor Council** also has filed an initiative to the 2005 Legislature. I-334 calls for changes to the Washington Industrial Insurance Act. I-334 would require employers providing health care to maintain coverage while workers are unable to work. Retrospective safety-related and administrative refunds would be returned directly to individual employers rather than the group sponsors. Employers with below-average safety records would not be permitted to participate in the retro program. Worker contributions to industrial insurance benefit funds are eliminated. Vocational retraining benefits may be extended to 104 weeks. Employers could be sanctioned for retaliating against workers filing claims or testifying. However, retaliation is already a violation of current law.

Note: Once an initiative to the Legislature is certified by the Secretary of State's Office as having the required number of valid signatures (currently 197,734), the Legislature can do one of the three things with it: 1) approve the initiative, thus enacting it into law; 2) do nothing, which means the initiative goes to a vote of the people later that year; or 3) it can pass its own version, in which case both the original and the Legislature's version go to a vote of the people.

SRC Wins

In 2003, an important workers' compensation measure was signed into law. SB 5271 requires a worker to file a hearing loss claim for "permanent partial disability" due to workplace exposure within two years of the date of the worker's last exposure to noise in the workplace that resulted in injury. Previous law required a worker to file within two years of the worker's receipt of written notice from a doctor that the hearing loss was caused by exposure in the workplace. Under SB 5271, all of a claimant's medical care will be paid no matter when that worker files a claim. This prevents workers from fraudulently seeking disability.

SRC Goals

Streamlining and adding predictability to workers' compensation benefits: The Senate in 2003 (25-24) and in 2004 (25-23) approved an important workers' compensation reform bill (ESSB 5378) that would have simplified and added certainty to workers' compensation benefits. However, that measure died both years in the House Commerce and Labor Committee.

Under this measure:
Wages must be calculated by using the highest four consecutive quarters of wages over the last two years. Using four-quarter averaging to determine an employee's weekly benefit amount, allows for a more equitable assessment of total earnings.

Fringe benefits, such as health insurance and retirement conditions, aren't included in the calculation of wages, and compensation is paid for lost wages at 65.5 percent of a worker's wage.

Under the 65.5 percent calculation, 71.2 percent of workers would see an increase in time-loss payments, 26.9 percent would see a decrease, and about 2 percent would see no change in their time-loss payments.

A flat rate is used by 45 states. ESSB 5378 would have saved $141 million in the state's accident account for the rest of the 2003-05 biennium and $21.8 million per future biennium.

Giving self-insurers more autonomy and authority over their claims: ESB 6317, which the Senate passed 29-20 in 2004 before it died in the House Commerce and Labor Committee, would have given self-insurers the power to process many aspects of a workers' compensation claim without prior approval from L&I.

Requiring L&I to adopt a plan that stops the misuse of worker and employer premiums: In 2004, the Senate voted 27-22 to pass SSB 6391, which would have required L&I to use the "Priorities of Government" process in budgeting and would have directed OFM to come up with a funding plan that doesn't include the use of accident and medical aid funds (worker and employer premiums) for purposes other than workers' compensation. The measure died in the House.

Requiring timely reports of on-the-job injuries: ESSB 6395, passed 30-19 by the Senate in 2004 before dying in the House, would have made changes to policies dealing with the reopening of injured worker claims. In order to alter benefits, a closed claim must be reopened. L&I must accept or deny the reopening of a claim within 90 days of application. A worker must notify the employer of an accident within five days.

Increasing accountability in L&I: SSB 6414, which the Senate approved 35-14 in 2004 before it died in the House, would have required JLARC and the office of

the State Actuary to conduct annual audits of L&I's state fund beginning in 2005, including a separate actuarial audit. Both audits would be done by independent firms. A report on both audits must be given annually by the legislative auditor to the Legislature, OFM, attorney general and L&I. L&I must let the legislative auditor know within six months what steps it has taken in response to the audits' recommendations.